



**NEW YORK**  
STATE OF  
OPPORTUNITY™

**Empire State  
Development**

# **NEW YORK TOURISM BUSINESS COVID-19 GRANT RELIEF PROGRAM GRANT ADMINISTRATOR REQUEST FOR PROPOSALS**

**Issued:** January 10, 2022

**IMPORTANT NOTICE:** A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the Contract. Bidders are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below (refer to: Section IX – Letter i).

Designated Contacts for this Procurement:

Primary Contact: RALPH VOLCY  
Secondary Contact: JOHN DISCOLO

All contacts/inquiries shall be made by email to the following address:  
[NYTourism2022RFP@esd.ny.gov](mailto:NYTourism2022RFP@esd.ny.gov)

This RFP is posted on the Empire State Development website:  
<https://esd.ny.gov/doing-business-ny/requests-proposals>

**Submission Deadline: February 4, 2022 by 8:00 PM EST**

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## I. INTRODUCTION

Empire State Development (“ESD”) is the chief economic development agency of the State of New York. The mission of ESD is to promote a vigorous and growing State economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State (“NYS”) through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

## II. OVERVIEW

In November 2021, Governor Kathy Hochul announced a comprehensive "Bring Back Tourism, Bring Back Jobs" inclusive recovery package to support New York State's hardest-hit tourism sector workers, and revitalize the state's tourism industry.

The comprehensive \$450 million initiative included a \$100 Million Tourism Return-to-Work Grant Program and a \$25 Million Meet in New York Grant Program.

**The Tourism-to-Work Grant Program** is designed to encourage tourism businesses that suffered job and revenue losses to rehire workers, while providing financial relief. Qualifying tourism businesses will be eligible for grants of up to \$5,000 per net new full-time equivalent employee, or \$2,500 per net new part-time equivalent employee, hired to offset their labor costs. To receive full benefit, employers will have to maintain employment increases over six months. More information, including a sign-up for program-related email alerts, is available <https://esd.ny.gov/tourism-return-work-grant-program>

**The Meet in New York Grant Program** focuses on venues and events to generate and support new business-focused travel. This holistic approach to visitation recognizes the spending habits of business and convention travelers for overnight stays, food and activities. The Meet in New York program will provide grants to help convention centers and conference spaces bring more events, traveler spending and jobs back to New York State. Qualifying venues and their partnering event hotels can offer meeting organizers discounts on booking fees or room blocks to entice business, with grants reimbursing a portion of such discounts. More information on qualifying businesses and events can be found <https://esd.ny.gov/meet-new-york-grant-program>

In consideration of the size of these Programs, the high number of grants that are expected to be administered, and a need to quickly disburse grants as fairly and efficiently as possible, ESD is seeking competitive proposals for a third-party grant administrator for the Program (“Respondent”) who will offer platform efficiencies to reduce Program costs and maximize the grants awarded to eligible Tourism businesses.

The selected Respondent would administer program grants by, as further detailed in the Scope of Services: using a cloud-based Software as a Service (“SaaS”) application portal developed by ESD to process the applications, vet the grants per eligibility criteria provided by ESD, and disburse grants in an equitable and fair manner based on key factors outlined below.

The Respondent will adhere to the IT specifications as outlined in Appendix B. The Respondent would also provide real-time dashboard and monthly reporting in a format acceptable to ESD.

### **MWBE & SDVOB Subcontractor Interest**

New York State certified Minority- and Women-Owned Businesses (“MWBEs”) and Service-Disabled Veteran Owned Businesses (“SDVOBs”) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The list will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send its contact information and a copy of its NYS MWBE or SDVOB certification to insert email addresses. MWBE or SDVOB vendors are not prohibited from proposing as a prime contractor.

## **III. SCOPE OF WORK**

### **A. Detailed Scope of Services**

Under the direction of ESD, the selected Respondent will be responsible for the following:

- Utilize a Program application intake portal developed by ESD
- Provide technical assistance to help application portal users complete Program applications
- Work within the application framework built by ESD to Accept all Program application materials
- Review and validate/vet Program application information to determine award eligibility or need for additional information
- Coordinate with ESD for applications that need further review to determine award eligibility
- Contact applicants to request missing information or address outstanding items
- Receive and review additional submitted information to finalize eligibility
- Prepare and submit funding requests to ESD
- Receive Program funds from ESD
- Adhere to and follow all requirements in Appendix B IT Project Deliverables as it pertains to this project
- Allocate funding awards among qualified program applicants
- Provide grant agreements to qualified program applicants
- Receive signed grant agreements from applicants
- Build a platform, or leverage an existing 3<sup>rd</sup> party platform, to disburse Program funds to awarded Program applicants
- Import required data from ESD application portal into the disbursement and tracking system built or leveraged by the 3<sup>rd</sup> Party

- Review required documentation to verify award amounts to be disbursed to Program applicants in consultation with ESD
- Report on Program funding awards and disbursements to ESD

## **B. Respondent Expectations**

Respondents should be able to:

- Receive State funds;
- Demonstrate capacity for regional/local implementation to ensure all regional geographies throughout New York State can access the Program;
- Demonstrate experience with developing and managing grant and/or loan programs including, but not limited to, program and application development, outreach and marketing, translation/interpretation, validation, verification and approval processes, methods for securing tax returns and other PII, fraud prevention, disbursement, customer service, compliance and reporting;
- Begin using the application portal and have an application review process ready by early March;
- Have an efficient processes and systems for vetting and disbursing grants quickly;
- Meet all deadlines outlined in this RFP and subsequently in the agreement established between ESD and the Respondent;
- Have the capacity and scalability to request the full funding amount of up to \$125 million to deploy statewide; and

## **C. Additional Considerations**

- The Respondent should have the processes to monitor and minimize fraud, waste and abuse.
- The Respondent should include details of its proposed fraud mitigation processes, including but not limited to, processes used in other grant administration and any additional methods specific to this Program.
- The Respondent should have a proven track record and extensive experience administering a grant program of this size.
- The Respondent must be able to work with the SaaS solution that has already been built by ESD.
- The Respondent also should be able to increase human talent to review applications as needed.
- The Respondent, working with ESD Program and IT staff, shall provide monthly reporting to Empire State Development on program progress including, but not limited to, the number of applicants and their county locations; the number of applicants approved by the program and their county location; the total amount of grants awarded, and the average amount of such grants awarded in a format acceptable to ESD.

- The Respondent, working with ESD Program and IT staff, shall maintain a real-time dashboard that provides data to ESD in an acceptable format including, but not limited to, the number of applicants and their county locations; the number of applicants approved by the program with their county and regional location; the total amount of grants awarded, and the average amount of such grants awarded, demographic data, geographic (including region) data, incorporation status, industries and status of the application.
- ESD has the right to conduct a programmatic and financial review of any grant recipient and sub-grant recipient.
- ESD will require the awarded Respondent to design verification processes and self-certifications and attestations to help ensure eligibility and equitable distribution and limit misuse.
- Program funds must be used solely for the purposes stipulated in this RFP and subsequently in the agreement between ESD and the Respondent.
- All costs proposed in an applicant's budget must meet the tests of allow-ability, allot-ability, and reasonableness.
- This Program does not have a match requirement.
- Funding provided by ESD to the Respondent will be provided in tranches dependent on agreed upon milestones.

### **NYS Tourism Return-To-Work Grant Program Details**

The New York State Tourism Return-to-Work Grant Program was created to incentivize employment growth by providing financial assistance to businesses in the tourism industry that suffered economic hardship due to the COVID-19 pandemic.

Businesses in the tourism industry shall mean for-profit or non-profit businesses, open to and/or servicing the public, engaged in a tourism-related field including, accommodations, arts, entertainment, scenic and sightseeing transportation, tour operators, convention and visitor groups, or other businesses that, in ESD's sole discretion, qualify as businesses in the tourism industry. (See Appendix E for additional descriptions).

ESD may deny eligibility to any business that restricts membership or is not open to and/or servicing the public.

All Eligible Applicants must:

- Continue to be in operation as of the date of application;
- Be incorporated in New York State or licensed or registered to do business in New York State;
- Have experienced economic harm resulting from the COVID-19 pandemic, as evidenced by a year-to-year decrease of at least 15% of gross receipts and/or gross wages between 2019 and

2020 (Applicants must demonstrate a year-to year loss of at least 15%; however Applicants with 25% or greater loss will receive priority);

- Not owe past due federal, state or local taxes, unless making payments pursuant to and complying with an approved binding agreement with the appropriate taxing authority;
- If a non-profit business (e.g., cultural institutions), be prequalified in Grants Gateway prior to the disbursement of any grant funds;
- Not be currently participating in the NYC Musical and Theatrical Production Tax Credit program OR the Empire State Musical and Theatrical Production Tax Credit Program;
- Eligible Applicants may not be more than 5% owned, directly or indirectly, by a publicly traded company;
- Be open to and/or service the public
- Be operating as businesses in the tourism industry (See Appendix E for more descriptions);
- Be in substantial compliance AND attest to being in substantial compliance with applicable federal, state and local laws, regulations, codes and requirements;

Grantees will be permitted to use grant funds to hire workers as well as to offset labor costs.

#### A. Grant Amounts:

Grants will be calculated as described based on the net employment increase.

- For year-round businesses, the net employment increase will be measured as:  
Q1-Q2 2022 average employment - Q4 2021 average employment
- For seasonal businesses, job growth will be measured as:  
Q1-Q2 2022 average employment – Q1-Q2 2021 average employment.
- Job growth will be measured based on the average total Full-Time Equivalent Jobs and/or Part-Time Equivalent Jobs, not specific employees, allowing for turnover, provided exiting employees are replaced.

For a net employment increase to be counted, the average job increase would need to be maintained for a six-month period (January – June 2022); job increases added mid-period will get fractional credit. Award Range:

- Minimum of \$10,000 per grantee (average of 2 net new Full-Time Permanent Jobs added)
- Maximum of \$200,000 per grantee (average of 40 net new Full-Time Permanent Jobs added).

ESD plans to evaluate applications on a first-come, first-served model, according to the date by which a completed preliminary application is submitted;

- The application process will allow for a cure period. Applicants that meet the eligibility criteria, cure any application defects in a timely manner (five business days), pass all due diligence screens, and meet final submission deadlines will retain their initial place in line. Applicants that are late in curing applications or fail to submit final documentation by the due dates will lose their place in line.
- Grant awards will be disbursed following the successful submission of documentation showing employment growth in Q1-Q2 2022.

#### Ineligible Businesses:

The following businesses/entities are ineligible for grants:

- Locally-oriented Gyms & Fitness and Recreational Sports Centers
- Restaurants
- Churches and other religious institutions
- Government-owned entities or elected official offices
- Businesses primarily engaged in political or lobbying activities
- Landlords and passive real estate businesses
- Illegal businesses or enterprises
- Gasoline stations
- Other industry or business types as specified by ESD

ESD will request a preliminary application to determine a business's Program eligibility.

The following documents will be required for applications:

- Proof of at least 15% Gross Receipts loss or 15% Gross Wages loss: 2019 and 2020 Business Income Tax returns (Applicants must demonstrate a year-to-year loss of at least 15%; however Applicants with 25% or greater loss will receive priority): o Items needed to show at least 15% Gross Receipts loss:
  - For corporations and LLCs – include IRS Form 1120 – Line 1a
  - For partnerships – include IRS Form 1065 – Line 1a and Schedule K-1
  - For sole proprietors – include IRS Form 1040 Schedule C – Line 1
- For non-profits – include IRS Form 990 – Line 12 o Items needed to show at least 15% Gross Wages loss:
  - For corporations and LLCs – include IRS Form 1120 – Line 13
  - For partnerships – include IRS Form 1065 – Line 9
  - For sole proprietors – include IRS Form 1040 Schedule C – Line 26



- For non-profits – include IRS Form 990 – Line 15
- Completed IRS Form 4506-T
- Proof of business location and current operation: Two of the following documents: o Current lease; or o Deed; or o Utility bill; or o Current business bank statement; or o Current business mortgage statement; or o Business credit card statement; or o Professional insurance bill; or o Payment processing statement; o NYS ST-809 or ST-100 sales tax collection documentation.
- Actual employment data (full-time, part-time hours) along with NYS 45 forms from Q4 2021 (for verification) to establish baseline employment. For seasonal businesses, submit NYS 45 forms from Q1-Q2 2021 (for verification) to establish baseline employment

Seasonal businesses must submit its most recent Employer’s Quarterly Federal Tax Return – include IRS Form 941

- For funds distribution: W-9 and bank account information

Eligible Applicant must provide evidence, acceptable to ESD, that the Eligible Applicant is operational and that the Eligible Applicant is not restricted by any state, local or other agency mandate.

- Due to a limited amount of funding and the high volume of requests expected, business type, geography and industry may factor into ESD’s determination to award a grant.
- ESD reserves the right to request evidence and additional information it, in its sole discretion, deems necessary to prove that any of these requirements are being met.

### **NYS Meet in New York Grant Program Details**

The New York State Meet In New York Grant Program was created to incentivize the return of conferences, meetings and trade shows that generate significant tourism economic activity (e.g., overnight stays, dining and other tourism activities) by covering a portion of the cost of event-based discounts at conference spaces and partnering hotels.

All Eligible Applicants must:

- Be in operation in New York State as of the date of application;
- Be incorporated in New York State or licensed or registered to do business in New York State;

- Have experienced economic harm resulting from the COVID-19 pandemic, as evidenced by a year-to-year decrease of at least 15% of gross receipts and/or gross wages between 2019 and 2020;
- Be in substantial compliance with any public health or other emergency orders or regulations related to the business' sector or other laws and regulations as determined by ESD;
- If a not-for-profit organization, be prequalified in Grants Gateway prior to disbursement;
- Not owe past due federal, state or local taxes unless making payments pursuant to and complying with an approved binding agreement with the appropriate taxing authority; and
- Be in substantial compliance with applicable federal, state and local laws, regulations, codes and requirements, including tax, labor and environmental laws within New York State.

In addition to the above, all Eligible Applicants seeking a grant for discounts on event space must further:

Have a minimum capacity of 250 people.

Grantees will be permitted to use grant funds to offset a portion of the discount offered for:

- Meeting space used in connection with meetings, conferences, exhibitions and other events that:
  - o Take place over the course of at least two consecutive days;
  - o Have at least 35% of their attendees come from at least 50 miles away, or at least 35% of event participants staying overnight in licensed lodging facilities;
- Occur after the acceptance of applications under the Program and prior to December 31, 2024; and o Have not been held in New York State in the last four (4) years (i.e., any time since 1/1/18).
- Discounts on room rates that:
  - o Are offered as a room block of at least 10 overnight rooms per night in connection with eligible events as defined in the program guidelines.

The following events are ineligible for grants:

- Any "repeat" event that has been held in New York State in the last four (4) years (i.e., any time since 1/1/18)
- Events held for any of the following ineligible purposes:
  - o Performing arts, sports or other non-participatory events put on primarily for the enjoyment of spectators;

- o Religious worship, instruction or proselytizing; o Personal events put on for friends/family, such as weddings, reunions, etc.;
- o Locally oriented events that do not draw visitors from over 50 miles away; and
- o Political activities of any kind or nature. Grants awarded under the Program may not be used for payments to a firm, company, association, corporation or organization in which a member of the grantee has any ownership, control or financial interest (i.e. self-dealing).

Documentation Requirements ESD will make available a preliminary application to determine a business's Program eligibility. The following documents will be required for applications:

- Proof of at least 15% Gross Receipts loss or 15% Gross Wages loss: 2019 and 2020 Business Income Tax returns:
- Items needed to show 25% Gross Receipts loss:
  - o For corporations and LLCs – include IRS Form 1120
  - o For partnerships – include IRS Form 1065 and Schedule K-1
  - o For sole proprietors – include IRS Form 1040 Schedule C
  - o For non-profits – include IRS Form 990 – Line 12
- Completed IRS Form 4506-T
- Description of the type of event, along with an executed contract, demonstrating event was contracted and/or rooms were booked after the Program start date and a down payment received from the event producer dated after the beginning of the Program's application period and before December 31, 2022 (hotels do not necessarily need a deposit from the event producer);
- Verification of hotel "standard" and "discounted" booking rates (e.g., calculation of average effective hotel/space rental fee rates during a given period);
- Evidence that this a new event that has not been held in New York State in the last four (4) years;
- Evidence that this event has at least 35% of their attendees come from at least 50 miles away, or at least 35% of event participants staying overnight in licensed lodging facilities;
- Attestation that the Applicant is in substantial compliance with applicable federal, state and local laws, regulations, codes and requirements; and
- Attestation that the Applicant does not owe any federal, state, or local taxes prior to July 15, 2020, or have an approved repayment, deferral plan, or in agreement with appropriate federal, state, and local taxing authorities.

ESD reserves the right to request evidence and additional information that ESD, in its sole discretion, deems to be necessary to prove any of these requirements are being met.

The application process will allow for a cure period. Applicants that meet the eligibility criteria, cure any application defects in a timely manner (five business days), pass all due diligence screens, and

meet final submission deadlines will retain their initial place in line. Applicants that are late in curing applications or fail to submit final documentation by the due dates will lose their place in line. ESD will also establish separate documentation that will need to be submitted in order for a business to be reimbursed after the conclusion of the event.

Grant Amounts ESD plans to allocate awards on a first-come, first-served model. Award letters will be provided once all requirements have met and confirmed. At this point a maximum award amount will be determined and ESD will reserve that amount to avoid oversubscription. Disbursement will take place following the completion of the event. Calculation:

- Conference Space Discount: will be reimbursed up to 75% of the discount granted for qualifying event space rental fees.
- Hotel Room Rate Discount: will be reimbursed at 50% of the discount granted for room blocks, capped at \$300 or 70% of the average regular room daily rate (“rack rate”) for the duration of the event, whichever is less.
- Grants may cover multiple events, with the grant size varying based on event size, discounts and award caps. Award Range:
- Minimum of \$10,000 per grantee per event
- Maximum of \$2,000,000 total grants per grantee (which may include multiple events)

Additional Information Eligible Applicant must provide evidence, acceptable to ESD, that the Eligible Applicant is operational and that the Eligible Applicant is not restricted by any state, local or other agency mandate.

ESD reserves the right to request evidence and additional information it, in its sole discretion, deems necessary to prove that any of these requirements are being met.

#### **SCHEDULE OF DATES**

It is anticipated that a contract will be awarded in response to this RFP based on the following schedule:

Release of RFP	January 10, 2022
Deadline for Submission of Questions	January 17, 2022 by 8:00 PM EST
Deadline for ESD to Respond to Questions	January 21, 2022
Submission of Proposals (date and time)	February 4, 2022 by 8:00 PM EST
Interviews (if necessary)	Week of February 7, 2022
Announcement of Successful Bidder	February 18, 2022
Anticipated Contract Start Date	February 28, 2022

Please note, ESD reserves the right to change any of the dates stated in this RFP.

## **IV. SELECTION CRITERIA**

### **i. Technical Proposal**

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. All Technical Proposals have to be organized with dividers identified to match the specific information requested below:

- A. Table of Contents
- B. Firm and Staff Experience and Qualifications
- C. Technical Platform flexibility and performance
- D. Project Plan, Approach and Budget
- E. Diversity Practices

The purpose of the Technical Proposal is to provide Bidders with an opportunity to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein, in a manner which complies with applicable laws and regulations, and the requirements of the RFP.

#### **A. Table of Contents**

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

#### **B. Firm and Staff Experience and Qualifications (25%)**

In this section of the Technical Proposal, Bidders should demonstrate relevant experience including the staff who have the knowledge and ability to perform the services described in this RFP by providing the following:

- Background information on your company, including: history, years in business, and experience in the past five years, company size, number of employees, types of services provided, locations, parent company, and/or affiliate information, type of company, etc. Also include a discussion on how your company meets the experience, knowledge and accomplishment requirements of this RFP.
- Detailed description of the applicant's experience with designing, developing and managing grant or loan programs and especially similar COVID-19 grant relief programs. Include examples of prior programs administered with related performance and impact measures. Highlight experience in effectively reaching and serving underserved small business groups and disadvantaged socio-economic communities. Please validate ability to scale past experience to statewide level.
- Specific accreditations your company has acquired since its inception, and give details of any company membership of professional or trade organization affiliations
- Key management and staffing plan to achieve proposed implementation schedule. Please include summary bios highlighting relevant experience in grants management, financial

oversight, and knowledge/expertise in small business and nonprofits, low-to-moderate income communities and underserved small business groups.

- Details of the experience and background of any proposed sub-contractors that will be used.

Information provided may be used for proposal evaluation purposes. ESD reserves the right to deploy, at its sole discretion, a variety of methods and communication approaches to contact references, depending on what it deems to be the most effective and efficient manner.

#### C. Technical Platform Flexibility and Performance (35%)

In this section of the Technical Proposal, Bidders should demonstrate experience with developing and managing grant and/or loan programs including, but not limited to, program and application development, outreach and marketing, translation/interpretation, validation, verification and approval processes, disbursement, customer service, compliance and reporting by:

- Attaching a list of at least three (3) relevant references, including the name of the reference, a brief statement describing the relationship between the Respondent and the reference entity, and the name, title and telephone number of a contact person at the reference entity. Attach a current client list. At least one reference must be from a municipality and include a summary of the project and total project cost. Please include the detailed information about the number of applications received and processed, amount of time from design to launch, surge hiring, and addressing customer experience.
- Provide a detailed narrative addressing how the technology platform that will be utilized for vetting, verification, validation and approval processes (including required documentation and timing), disbursement process, customer service, reporting and compliance processes and also address how the platform can handle up to 300,000 applications and keep PII secure from application to disbursement.

Information provided by references may be used for proposal evaluation purposes. The Corporation may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Bidder to the client during the engagement.

#### D. Project Plan, Approach and Budget (30%)

In this section of the Technical Proposal, Bidders should demonstrate their competence and capacity to undertake the services described in this RFP by providing the following:

- Proposed Program Design: Provide full detail of proposed COVID-19 Pandemic Tourism-to-Work and Meet in NY Grant Program Design including Application and Awards Process. Also include specifics on vetting, verification, validation and approval processes (including required documentation and timing), disbursement process, customer service, reporting and compliance processes. Applicants will be required to submit a flow chart and other relevant

visuals or diagrams of Program design and grants administration process of the proposed design.

- In addition to core partners included in Program design, please describe the applicant's additional external partnerships that will be deployed to achieve Program management and achieve desired outcomes. Please describe how the applicant has worked successfully with Tourism or similar business ecosystems and technical assistance providers to ensure businesses and non-profits receiving grants are connected to resources. Further, describe how the applicant will leverage its partners and networks to better reach underserved small business groups and non-profits.
- A detailed plan identifying any and all subcontracting opportunities associated with this Project, and explain how Minority and Women-owned Business Enterprise (MWBE) and Service-Disabled Veteran-Owned Business (SDVOB) entities would be utilized.
- Proposed Program schedule with detailed validation of speed of distribution of grants and ability to achieve disbursement of funds and target with strong controls within time allotted.
- Measures and processes that will be incorporated to combat fraud, waste and abuse.
- Budget narrative to support the proposed budget submitted as Appendix A.
- Financial management and controls narrative.

E. Diversity Practices (10%)

ESD's Office of Contractor and Supplier Diversity will score each application for Diversity Practices. Up to 10 percent will be awarded based upon the contents of the Diversity Practices Questionnaire Appendix D, submitted by each RFP Respondent.

## **ii. Administrative Proposal**

Schedule A of this RFP states standard requirements that must be included in every contract entered into with ESD. The successful Bidder must agree to abide by these requirements and provide any information requested by ESD in connection with these requirements. Accordingly, Bidders should complete and submit the items listed below, in the order in which they are listed. Failure to submit any of the requirements below may result in the rejection of a Bidder's proposal.

- i. [Evaluation Conflict Disclosure Statement](#) submit with proposal
- ii. [State Finance Law §§139-j and 139-k Forms](#), submit with proposal
- iii. [Vendor Responsibility Questionnaire](#), submit with proposal or submit online (and include copy of submitted form with proposal)
- iv. <http://intranet.empire.internal/Finance/IranDivestmentActLanguage.pdf> submit with proposal
- v. Non-Discrimination and Contractor & Supplier Diversity Requirements, submit with proposal
  - [OCSD-1 - MWBE and SDVOB Participation / EEO Policy Statement](#)

- [OCSD-2 - Staffing Plan](#)
- [OCSD-4 - MWBE and SDVOB Utilization Plan](#)
- vi. [Encouraging the Use of NYS Businesses in Contract Performance Form](#), submit with proposal
- vii. Certification under State Tax Law Section 5-a [220-CA](#) or [Affidavit](#), submit with proposal
- viii. IRS [W-9 Form](#), submit with proposal

Additional information about these items, and ESD's procurement requirements, can be found in Section IX of this RFP ("Procurement Forms and Requirements").

## **V. SUBMISSION OF PROPOSALS**

Every respondent to this RFP ("Bidder") should submit a proposal which clearly and concisely provides all of the information requested. Emphasis should be concentrated on conformance to the RFP instructions and requirements, as well as completeness and clarity in its proposal response. The Bidder is advised to thoroughly read and follow all instructions contained in this RFP. Proposals that do not comply with these instructions or do not meet the full intent of all the requirements of this RFP may be subject to scoring reductions during the evaluation process or may be deemed non-responsive.

### **Submission of a Complete Two-Part Proposal**

Firms submitting a proposal are indicating their acceptance of the conditions in this RFP. Submission of proposals in a manner other than as described in these instructions (e.g., facsimile, hard copies) will not be accepted. When submitting each proposal, Bidders must comply with the following:

1. The Technical Proposal and all related appendices must be submitted electronically before the submission deadline via the designated email [NYTourism2022RFP@esd.ny.gov](mailto:NYTourism2022RFP@esd.ny.gov).
2. The Administrative Proposal and all related forms must be submitted electronically before the submission deadline via the designated email [NYTourism2022RFP@esd.ny.gov](mailto:NYTourism2022RFP@esd.ny.gov). It is essential that the instructions in Appendix C - Administrative Proposal Check List are followed when submitting the different forms.

**Late proposals will not be considered for award.**

## **VI. QUESTIONS**

Questions or requests for clarification regarding the RFP should be submitted via the designated email, [NYTourism2022RFP@esd.ny.gov](mailto:NYTourism2022RFP@esd.ny.gov), citing the RFP page and section in accordance with the schedule in Section IV (Schedule of Dates.) Questions will not be accepted orally and any question received after the deadline will not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted with this RFP.



## **VII. GENERAL PROVISIONS**

This RFP issuance and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

- i. Amend, modify or withdraw this RFP;
- ii. Revise any requirement of this RFP;
- iii. Require supplemental statements or information from any responsible party;
- iv. Accept or reject any or all responses hereto;
- v. Extend the deadline for submission of responses hereto;
- vi. Negotiate potential contract terms with any Bidder;
- vii. Communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
- viii. Cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
- ix. Extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

### **Required Approvals**

The awarded contract, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of \$1 million dollars, or modifications to contracts that result in an aggregate value in excess of \$1 million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

## **Performance**

The Contractor's performance will be assessed by ESD according to the achievement of the Contractor's contractual obligations in a timely and professional manner, as set forth in the resulting contract. ESD will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.

Contractor warrants that its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to ESD, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

## **Additional Services Requested**

ESD may, at any time, by written notice, make changes or additions to work or services within the general scope of the contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that ESD, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

## **Contractor Staff**

Contractor staff assigned to work on this project shall be subject to approval by ESD. It is highly desirable that staff assigned to work on this project continue to work on this project until completion. The Contractor should notify ESD of any proposed changes in staff immediately. ESD has an absolute right and discretion to approve or disapprove any proposed changes in staff. ESD, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder.

The Agreement resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

The Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably

withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

## **VIII. CONTRACTUAL REQUIREMENTS**

This section contains additional information about the forms that are required to be included in each Bidder's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

### **i. Conflicts of Interest**

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation within at least 30 days from the time that the employee's involvement in this matter closed.
- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State

Join Commission on Public Ethics or its predecessor State entities (collectively, “Commission”), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**ii. State Finance Law Sections 139-j and 139-k Forms**

State Finance Law Sections 139-j and 139-k (collectively, the “Procurement Requirements”) apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Bidders and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the “Restricted Period”), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under “RFPs/RFQs”); and periodic updating of such forms during the term of any contract resulting from this RFP.

Bidders must submit the Offerer Disclosure of Prior Non-Responsibility Determinations, and the Offerer’s Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

[https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Bidders and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Bidder and its subsidiaries, related or successor entities will be determined to be a non-responsible Bidder and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

This is not a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at:

[http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy\\_Jan2007.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf). All potential Bidders are solely responsible for full compliance with the Procurement Requirements. Both the prime consultant and any sub-consultants complete the forms required above.

**iii. Vendor Responsibility Questionnaire**

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have

and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain "responsible" throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Bidders register in the State's Vendor Responsibility System ("Vend-Rep System"). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Bidders are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep) or go directly to the Vend-Rep system online at <https://portal.osc.state.ny.us>. For direct Vend-Rep System user assistance, the Office of the State Comptroller's Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company's trade industry. Per the website, Bidders are to "Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other)."

In addition, please see link to EO-192: <https://www.governor.ny.gov/news/no-192-executive-order-imposing-continuing-vendor-integrity-requirements-state-contracts>

#### **iv. Iran Divestment Act**

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

The list in question is maintained by the Office of General Services. For further information and to view this list please go to: <https://ogs.ny.gov/system/files/documents/2019/03/listofentities.pdf>

**v. Executive Order 177**

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

**vi. Non-Discrimination and Contractor & Supplier Diversity Requirements**  
**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of ESD contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an overall goal of **30 percent** for MWBE participation (based on the current availability of MBEs and WBEs). A contractor (“Contractor”) on any contract resulting from this procurement (“Contract”) must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor’s “good faith efforts,” refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a monthly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of month over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [\*\*SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES\*\*](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a monthly basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>



Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4%20Utilization%20Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6%20-%20Contractor%20Compliance%20Payment%20Report.pdf%20>

Form OCSD-7: <https://esd.ny.gov/sites/default/files/OCSD-7-MWBE-Expedite-Request-Form.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Diversity Practices**

ESD has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Bidders is practical, feasible, and appropriate. Accordingly, Bidders shall be required to include as part of their response to this procurement the Diversity Practices Questionnaire (Appendix D).

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### **Contract Goals**

- A. ESD hereby establishes an overall goal of **6 percent** for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.

### **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

**Request for Waiver**

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

**Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

### **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

#### **vii. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSES/INCONTRACTPERFORMANCE.pdf>.

#### **viii. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**ix. Schedule A**

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: [https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

**x. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

**xi. Insurance Requirements**

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- In the event that you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

**xii. IRS W-9 Form**

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.